

October 25, 2022

VIA ECF

The Honorable Lewis J. Liman
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Jackpocket, Inc. v. Lottomatrix NY LLC, et al.*, 22-cv-05772-LJL

Dear Judge Liman,

Pursuant to Your Honor's request during the preliminary injunction hearing, the parties jointly submit this letter regarding whether they intend to introduce additional evidence into the record for the November 14, 2022 trial and the procedures for trial.

The parties have discussed the additional evidence that both sides intend to introduce into the trial record (which is described below). Based on these categories of evidence, the parties currently believe that this evidence can be introduced and submitted along with the parties' Joint Pre-Trial Order and related pre-trial filings. While the parties are still trying to determine a workable schedule that will facilitate submissions on paper, should the parties be able to do so, then the parties currently believe that additional, live testimony will not be necessary. Thus, while the parties defer to the Court's preferences, the parties tentatively propose that all trial submissions and record evidence be submitted in writing.

I. Plaintiff's Additional Evidence

At this time, Plaintiff intends to submit the following additional evidence at trial:

- Testimony by declaration of Michelle Wong, VP of Marketing at Jackpocket. Consistent with Your Honor's preference, the parties have agreed to the submission of Ms. Wong's testimony by written declaration.
- Expert testimony (including affirmative expert testimony and rebuttal to any additional expert testimony/reports that Defendants offer). Consistent with Your Honor's preference, the parties have agreed to the submission of expert testimony by written declaration, in a manner consistent with the procedure used by the parties' during the preliminary injunction hearing.
- Depositions designations submitted pursuant to Rule 6(C)(ii) of Your Honor's Individual Practices in Civil Cases.

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- Additional trial exhibits from the parties' ongoing and upcoming document productions.

II. Defendants' Additional Evidence

At this time, Defendants intend to submit the following additional evidence at trial:

- Expert testimony (including affirmative expert testimony and any rebuttal to any additional expert testimony/reports that Plaintiff offers). Consistent with Your Honor's preference, the parties have agreed to the submission of expert testimony by written declaration, in a manner consistent with the procedure used by the parties' during the preliminary injunction hearing.
- Depositions designations submitted pursuant to Rule 6(C)(ii) of Your Honor's Individual Practices in Civil Cases, including deposition testimony of Plaintiff's Declarant, Michelle Wong.
- Additional trial exhibits from the parties' ongoing and upcoming document productions.

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As noted above, the parties are currently conferring on a proposed pre-trial and trial schedule, which the parties will submit under separate cover as soon as they are able to and, in any event, before the week is over.

Respectfully submitted,

/s/Douglas A. Rettew

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